IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 60 OF 2001.

Shri Atmaram Shetye,
r/o Camarcazana, Mapusa. ... Appellant.

Versus

1. Sangappa V. Tenginakai,
   r/o Camarcazana, Mapusa.
2. State (through Public Prosecutor). ... Respondents.

Mr. S.S. Kantak, Advocate for the Appellant.

Mr. A. Monteiro, Advocate under Legal Aid Scheme for Respondent No. 1.

Mrs. W. Coutinho, Additional Public Prosecutor for the Respondent No. 2 State.

Coram : P.V. HARDAS, J.

Date : 12th June 2003.

ORAL JUDGMENT.

This appeal has been filed by the appellant/original accused, being aggrieved by the conviction and sentence passed by the Additional Sessions Judge, Mapusa, in Sessions Case No. 11 of 1997, by Judgment dated 2nd November 2001. The appellant/accused stands convicted for offences punishable under Sections 364, 325 and 342 of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for one year and fine of Rs. 5000/- in default 6 months simple imprisonment; rigorous imprisonment for one year and fine of Rs. 2000/- in default two months simple imprisonment and rigorous imprisonment for three months and fine of Rs. 500/- in default 15 days simple imprisonment respectively.

2. This Court, on an earlier occasion, in Criminal Appeal No. 28 of 2001, remanded the matter to the learned trial Court for recording the evidence of witnesses, who had not been examined. By the Judgment and Order of the Additional Sessions Judge, Mapusa, impugned in the said appeal, the Additional Sessions Judge had acquitted the accused. The complainant being aggrieved by the acquittal of the accused had filed Criminal Appeal No. 28 of 2001 in this Court. This Court by its Judgment dated 4th May 2001, as stated earlier, had passed an order for re-trial by permitting the prosecution to examine the remaining witnesses, if any, subject however to certain conditions that would find favour with the trial Court, with a view to ensure that no delay is caused in the final disposal of the matter. In the said appeal before this Court one of the grievances of the original complainant was that the learned trial Court had not permitted the prosecution to examine some of the witnesses, whose evidence was essential for the just decision of the case. This Court, therefore, in the light of the submission, remanded the matter to the learned trial Court for examination of the witnesses by the prosecution.

3. On remand, the learned trial Court held a de novo trial and permitted the prosecution to examine all the witnesses afresh including some of the witnesses,

who had been examined earlier. The prosecution chose not to examine one Ligour D'Souza, who was examined earlier as P.W.3, Ulhas Gopal Nachinolkar, who was examined earlier as P.W.6, Shobha Shirodkar, who was examined earlier as P.W.9 and Kalika Bombkar, who was examined earlier as P.W.10. After remand, the prosecution examined 9 other witnesses, who had not been examined earlier. It is quite apparent that the attention of the learned trial Court was not invited to the Order passed by this Court permitting the prosecution to examine only the witnesses who had not been examined. According to me, it was the solemn duty of the prosecution to have brought the Order of this Court to the notice of the learned trial Court instead of proceeding to examine the witnesses de novo. Be that as it may, the learned trial Court, after recording the evidence, by the aforesaid Judgment has convicted and sentenced the accused as aforestated.

4. Mr. Kantak, the learned counsel appearing on behalf of the appellant, has urged before me that there is a gross irregularity committed in the proceedings as the complainant has been permitted to re-examine the witnesses already examined earlier. The complainant has also been permitted to drop some of the witnesses examined earlier. The net result of this exercise is that the accused are prejudiced as the complainant had

an opportunity of refurbishing the evidence of the witnesses already examined and dropping some of the inconvenient witnesses. Apart from the prejudice, according to me, the learned trial Court should have permitted the prosecution to examine only those witnesses not examined earlier. However, as the attention of the learned trial Court was not drawn to the Order of this Court, this irregularity has occurred.

5. I have heard Mr. Monteiro, the learned counsel appointed under the Legal Aid Scheme for the respondent no. 1/original complainant and the learned Additional Public Prosecutor for the respondent State. Both the learned counsel state that the complainant ought to have been permitted to examine the witnesses not examined earlier and ought not to have been permitted to re-examine the witnesses afresh, which was in breach of the directions of this Court.

6. According to me, the prejudice which has been caused to the accused is inherent and implicit in the procedure which has been followed. There is no other alternative but to remand the matter to the trial Court. I am also conscious of the fact that the matter is of the year 2001 and that the matter was once remanded. However, according to me, this remand is inevitable and though the law requires speedy disposal of cases, this

case has remained pending unfortunately for the reasons stated above.

7. In the result, therefore, this appeal is allowed. The conviction and sentence passed on the appellant is quashed and set aside and the matter is remanded to the trial Court with a direction that the learned trial Court shall take into consideration all the witnesses 1 to 10 examined earlier and the other witnesses who had not been examined earlier and record afresh the Statement under Section 313 of the Code of Criminal Procedure of the accused, if it feels so necessary and shall thereupon decide the matter as per law after hearing the respective counsel. The learned trial Court is requested to decide the matter as expeditiously as possible, preferably within three months from the receipt of the records and proceedings from this Court. Records and proceedings be remitted to the learned trial Court immediately.

(P.V. HARDAS)
JUDGE.

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